IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.873 OF 2006

In

WRIT PETITION NO.1547 OF 2006

H.J. Gohil : Appellant

V/s.

M/s.Kanga & Co. : Respondent

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Mr.Nitin Vhatkar i/b. Mr.Gautam Hiranandani for the appellant.

Mr.Sudhir Talsania, senior counsel, with Mr.Avinash Jalisatgi i/b. M/s.Thakore Jariwala & Associates for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : DECEMBER 6, 2006.

P.C.

We heard the counsel for the appellant.

2. Two-fold contention was advanced by the counsel for the appellant. First, he submitted that the appellant was entitled to claim overtime wages which was wrongly negatived by the Industrial Court as well as by the learned single Judge. According to him, the award of

claim towards overtime in the sum of Rs.9,542.95 is only towards part of the overtime work done by the appellant. The second contention of the counsel for the appellant is that the Industrial Court as well as the learned single Judge erred in not adverting to the appellant's claim for encashment of casual leave and privilege leave.

3. None of the contentions has any merit. As regards the overtime claim, from the material placed on record, the appellant was found to be entitled to Rs.9,542.95 for the overtime work done. Beyond this, there was no material placed on record justifying additional overtime. As a matter of fact, the appellant miserably failed to establish his overtime claim beyond the sum of Rs.9,542.95 as would be clear from the prayer made in the complaint itself whereby the appellant claimed ad hoc payment of Rs.50,000/- towards overtime work. We find that the finding recorded by the Industrial Court that the appellant is entitled to payment in the sum of Rs.9,542.95 towards overtime is based on the evidence on record and the learned single Judge did not commit any error in accepting the said finding.

4. Insofar as the appellant's claim for encashment of casual and privilege leave is concerned, it is an admitted position that the appellant actually worked with the 1st

respondent for the period from 1.6.1988 to 10.9.1991. It is also an admitted case of the appellant that during this period, he received encashment of leave for 97 days. We may recapitulate the admission of the appellant in his cross-examination wherein he stated:-

> "It is correct to say that since 10.09.1991 till the age of my superannuation, I have not worked even on a single day in the respondent company".

In this view of the matter, it is clear that the appellant failed to establish his claim for encashment of leave (casual and privilege). Moreover, it appears that this point was not urged before the learned single Judge. If this point was canvassed, the learned single Judge would have surely noticed it in the impugned order. Upon the counsel’s insistence that this point was urged before the learned single Judge, we wanted him to show in the memo of appeal wherein such ground has been raised. There is no such ground in the memo of appeal.

5. Appeal is devoid of any substance and is, accordingly, dismissed in limine.

R.M. LODHA, J.

S.A. BOBDE, J.